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In re Application of	:	
MORGAN, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/030,039	:	
PCT No.: PCT/ZA00/00123	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 06 July 2000	:	
Priority Date: 06 July 1999	:	
Attorney Docket No.: 4415.18USWO	:	
For: USE OF METATHESIS PRODUCTS OF	:	
FISCHER-TROPSCH PROCESS PRODUCTS	:	

This decision is in response to applicant's "Petition Under 37 C.F.R. §1.47(a)" filed 26 June 2002 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 06 July 2000, applicant filed international application PCT/ZA00/00123, which claimed priority of an earlier application filed 06 July 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 January 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 October 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 06 January 2002.

On 03 January 2002, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement; a First Preliminary Amendment and an unsigned oath or declaration of the inventors.

On 15 March 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also notified of the need to pay the \$130.00 surcharge for providing the oath or declaration later than 30 months from the earliest claimed priority date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 26 June 2002, applicant responded with the present petition accompanied by a declaration executed by Dave Hedley Morgan, Hester De Wet, Jan Mattheus Botha, Sybrandus Kindermans, Alta Spamer, Bongani Nkosi and Muzikayise Mbatha on their own behalf and that of the non-signing inventor Robin John Nash. In addition, applicant filed a petition for a two-month extension of time along with the proper petition fee. As such, applicant's response to the Notification mailed 15 March 2002 is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to Item (1), applicants have provided payment of the \$130.00 petition fee.

Regarding Item (3), applicants have provided the last known address for inventor Nash. Applicants have, therefore, satisfied Items (1) and (3) above.

As to Item (2), the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal states that, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature."

Applicants have not shown that a *bona fide* attempt was made to present the application papers, including the specification, claims, and drawings to the purported non-signing inventor, Mr. Robin John Nash. A review of the filed affidavits and cover letters leads to the conclusion that merely the combined declaration and power of attorney and assignment document were forwarded to Mr. Nash. As detailed above, before a refusal can be alleged the non-signing inventor must be presented with a complete set of application papers.

Regarding Item (4), the accompanying declaration signed by the remaining inventors on their behalf, and on behalf of the non-signing inventor contains two "Pages 4 and 5." This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. (See MPEP 201.03 B. Oath or Declaration.)

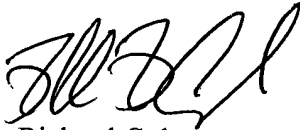
In light of the above, applicant's petition cannot be granted.

CONCLUSION

Applicant's petition under 37 CFR 1.47(a) is **DISMISSED, without prejudice.**

Applicants are hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file either 1) an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by all inventors or 2) a renewed petition satisfying all requirements under 37 CFR 1.47(a). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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